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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (4) of the Optional Protocol, concerning communication No. 91/2015*,**

Communication submitted by:	O.G. (represented by counsel, Valentina Frolova)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	1 March 2015 (initial submission)
References:	Transmitted to the State party initially on 20 July 2015; Russian version resubmitted on 9 December 2015 (not issued in document form)
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* Adopted by the Committee at its sixty-eighth session (23 October–17 November 2017).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Nicole Ameline, Magalys Arocha Dominguez, Gunnar Bergby, Marion Bethel, Louiza Chalal, Hilary Gbedemah, Nahla Haidar, Yoko Hayashi, Lilian Hofmeister, Ismat Jahan, Dalia Leinarte, Rosario Manalo, Lia Nadaraia, Aruna Devi Narain, Patricia Schulz, Wenyan Song and Aicha Vall Verges.

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1. The author of the communication is O.G., a national of the Russian Federation born in 1985. She claims to be a victim of violations by the Russian Federation of her rights under articles 1, 2 (b)–(g), read in conjunction with the Committee's general recommendations No. 19 (1992) on violence against women and No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, and articles 3 and 5 (a) of the Convention. The Russian Federation ratified the Convention and the Optional Protocol thereto on 23 January 1981 and 28 July 2004, respectively. The author is represented by counsel.

Facts as submitted by the author

2.1 The author was in a civil partnership with K. from 2008 to 2010. During that time K. allegedly used psychoactive substances and alcohol and insulted the author. He also had a gambling addiction. For those reasons, the author left him. In late 2010, she began living with another partner. Nevertheless, K. continued to call the author, demanded that their relationship should continue, sent offensive text messages, visited the building in which she lived and insisted on entering her flat. Because of the psychological harassment and K.'s obsessive behaviour, the author stopped communicating with him.

2.2 On 4 December 2011, at around 7 p.m., K. came to the author's house and demanded that she should let him in. When the author refused, he hit her in the face in front of her son and the author's partner. Afterwards, he ran outside and broke the author's window with a stone.

2.3 On 20 December 2011, the author approached the Crisis Centre for Women, a non-governmental organization in Saint Petersburg, to report the events. She was offered legal aid. On 21 February 2013, K. was found guilty by Magistrate's Court No. 1 of the Admiralteysky District of having committed a crime under article 116 (1) of the Criminal Code (battery) and was sentenced to four months of corrective labour with 5 per cent of his income to be withheld by the Government. Under article 73 of the Criminal Code, his sentence was suspended with a six-month probationary period.[1] He was also ordered to compensate the author for the moral damage caused to her in the amount of 3,000 roubles (around $50).

2.4 On 23 February 2013, K. repeatedly sent the author text messages containing insults and threats that he would catch her and kill her and her partner. On 24 February 2013, the author filed a criminal complaint at the local police station. On 7 March 2013, the police officer in charge of the complaint issued an official decision refusing to initiate a criminal investigation on the grounds that he could not interrogate K. because the latter would not come to the police station and, because he was not backing up his threats with action, the author's life was not in danger.

2.5 On 20 May 2013, K. sent another text message to the author, telling her to "come home faster, I am waiting for you here by the door". The author immediately called the police and reported the threat. Nevertheless, the police called back 10 minutes later and said that they had talked to K. by telephone and that he had promised that he would leave her alone. Some 90 minutes later, the author received another insulting text message from K.

[1] Article 73 of the Criminal Code states that, if by imposing corrective labour, restriction in military service, service in a disciplinary military unit or deprivation of liberty for a term of up to eight years, a court of law arrives at the conclusion that it is possible to rehabilitate the convicted person without his actually serving punishment, then the court shall decree that the imposed penalty be suspended. Conditional sentences shall not be given to persons convicted for offences against the sexual integrity of minors under 14 years old.

2.6 On 21 May 2013, the author submitted a written complaint to the police concerning the text messages of 20 May 2013 and asked the police to conduct a criminal investigation. On 30 May 2013, the same officer who was in charge of the complaint made on 24 February 2013 rendered an official decision refusing to initiate a criminal investigation on the same grounds as previously.

2.7 On 2 March 2013, the author appealed against the decision of the magistrate's court of 21 February 2013 on the grounds that the sentence was too lenient and asked for higher compensation. On 20 June 2013, the author petitioned the same court for protective measures from K. Both her appeal and petition were denied on 11 July 2013.

2.8 On 26 August 2013, the author again requested the police to initiate criminal proceedings against K. on account of his death threats, but in vain. In total, the police rendered seven decisions refusing to initiate criminal proceedings against K. on the same grounds that they could not interrogate him because he would not come to the police station and, because he was not backing up his threats with action, the author's life was not in danger. Those decisions were all signed by the same police officer.

Complaint

3.1 The author contends that the Russian Federation failed to fully implement the Convention and, in particular, to introduce contemporary and comprehensive legislation on domestic violence in line with international law that was "put in into effect by State actors who understand and adhere to the obligations of due diligence". She argues that there is no definition of domestic violence in the national legislation. Not every form of domestic violence can be prosecuted under the Criminal Code or even the Code of Administrative Offences. No protective measures can be requested by victims of domestic violence. In that regard, the author claims that by not addressing the issue of domestic violence in its legislation the State party is violating her rights under articles 1 and 2 (b), (c), (e) and (f) of the Convention, read in the light of general recommendation No. 19.

3.2 The author also claims that the State party did not respond adequately to the new threats of violence against her and was reluctant to promptly examine her numerous complaints. The State party also failed to implement special measures, such as protective orders, to ensure her immediate safety. The author further claims that the general measures of State protection in criminal proceedings are not designed to provide protection for victims of domestic violence. She therefore claims that the State party has violated the positive obligations imposed on it in accordance with articles 1 and 2 (b)–(g) of the Convention, read in the light of general recommendations No. 19 and No. 28.

3.3 The author further contends that, in considering her persistent requests for protection from domestic violence, the officials were guided by stereotypes about what constitutes domestic violence and to what extent it is dangerous to the victim. Following misconceptions that domestic violence is not of a serious nature and does not constitute a "real" threat to a woman's life, safety or physical or mental integrity, the authorities remained completely passive in response to the author's complaints, which amounts to a violation of her rights under article 5 (a) of the Convention, read in the light of general recommendations No. 19 and No. 28.

3.4 The author notes that she repeatedly lodged complaints with the police and that the only action taken in response was to interrogate the author herself. The police refused to initiate criminal proceedings without even interrogating the alleged perpetrator or taking any other steps. Even though all the refusals were later quashed by the District Prosecutor's Office and returned for additional inquiry, the

police still refused to conduct any meaningful investigation. The author further notes that, because of a two-year statute of limitations, any attempts to prosecute K. after February 2015 were time-barred. Thus, the refusal by the authorities to conduct an effective and prompt inquiry into the long-term threats made against the author and to bring the perpetrator to justice, as well as into the use of stereotypical notions of what constitutes domestic violence, violates articles 2 (b)–(f) of the Convention, read in the light of general recommendations No. 19 and No. 28.

3.5 The author claims that the police never genuinely investigated her complaints and even though the refusal by the police to conduct a criminal investigation was quashed by the District Prosecutor's Office and by the District Court it has not led to any meaningful investigation of her complaints to date. She was thus deprived of any effective remedy and, as a result, of any compensation and rehabilitation, in violation of articles 2 (b) and (e) of the Convention.

3.6 The author also argues that the authorities have provided no psychological support to K. to prevent the reoccurrence of his violent acts. The current law and practice provide no rehabilitation programmes for perpetrators of domestic violence or the mandatory attendance of a psychologist or therapist, in violation of articles 2 (b), (e) and (f) of the Convention, read in the light of general recommendation No. 19.

State party's observations on admissibility and the merits

4.1 On 29 April 2016, the State party submitted its observations on the admissibility and merits of the communication. It recalls that the author lived with K. and their child from 2008 to 2010. At the beginning of 2010, their relationship ended, at the initiative of the author. Nevertheless, K. sought to revive the relationship, which led to conflict. On 21 February 2013, based on the author's private complaint before a court, K. was found guilty by Magistrate's Court No. 1 of the Admiralteysky District of having committed a crime under article 116 (1) of the Criminal Code (battery) and was sentenced to four months of corrective labour and for 5 per cent of his income to be withheld by the Government, with a six-month probationary period. In addition, K. paid the author 3,000 roubles as compensation for moral damage. The State party claims that the author did not complain to law enforcement bodies about any other acts of physical violence by K.

4.2 On 1 March 2013, the author submitted an appeal to the Oktyabrskiy District Court regarding the decision of the magistrate's court of 21 February 2013 on the grounds that it was too lenient and sought higher compensation for moral damage. The appeal was denied on 11 July 2013, as the Court found that the punishment was proportionate to the offence committed and not unduly lenient.

4.3 Furthermore, within the appeal process, the author petitioned for measures of protection in accordance with the law on State protection of victims, witnesses and other participants in criminal proceedings. On 11 July 2013, the Oktyabrskiy District Court denied her petition on the grounds that there was no objective information showing the existence of a real threat to the life and health of the author or her relatives.

4.4 Neither the author nor her counsel lodged a cassation appeal to the Supreme Court against the decision of the lower court of 21 February 2013 or the decision of the appellate court of 11 July 2013.

4.5 The State party notes that the author's dissatisfaction with the results of trials does not amount to a violation of the Convention. The decisions of the courts are based on national legislation and do not contradict international law. In that regard, the author's complaint can be viewed as an abuse of the right to a fair trial.

4.6 The State party believes that the author had not exhausted all available domestic remedies before applying to the Committee and therefore considers that her complaint should be deemed inadmissible under article 4 (2) (b) of the Optional Protocol.

4.7 On 23 February 2013, police station No. 1 in Saint Petersburg registered the author's complaint that K. had called her and sent her text messages containing threats of death and physical violence. The allegations were investigated under article 119 of the Criminal Code[2] and, on 7 March 2013, the authorities issued a decision not to prosecute K. owing to a lack of corpus delicti. The author was duly informed of the decision and of her right to appeal against it.

4.8 The State party also notes the author's complaint against the refusal by the police, dated 7 March 2013, to initiate a criminal case against K.[3] and states that this decision was repeatedly returned as unlawful and unsubstantiated by the District Prosecutor's Office for additional investigation. The last such procedural decision was taken on 20 March 2016 and sent to the supervising prosecutor for termination owing to incomplete investigation. Currently, there is an internal investigation by the police regarding the failure to carry out the action demanded by the District Prosecutor's Office and to investigate the author's complaints in due time. The State party maintains that, in accordance with the information available in the case files, the last and only episode of telephone threats made by K. against the author is dated 24 February 2013.

4.9 As to the merits of the case, the State party argues that the author has not sufficiently substantiated her complaint. It further notes that, notwithstanding the absence of the term "domestic violence" in Russian legislation, its meaning, depending on the circumstances of the case, can be classified as torture (art. 117 of the Criminal Code), threats of death or grave bodily harm (art. 119 of the Criminal Code) or insult (art. 5.61 of the Code of Administrative Offences). Moreover, committing a crime using physical or mental violence is viewed as an aggravating circumstance (art. 63 (1) (k) of the Criminal Code).

4.10 The State party argues that the author has not substantiated her claim that it failed to provide equal legal protection of the rights of women and men, failed to provide, through courts and other State bodies, effective protection of women against acts of discrimination and failed to take measures to eliminate discrimination against women.

4.11 Article 19 of the Constitution guarantees equality of rights and freedoms of human beings and citizens, irrespective of their gender, and equality before the law and courts. Men and women have equal rights and freedoms and equal opportunities for their realization. The author was not limited in terms of access to justice and had access to effective remedies, which she used. As a result, K. was found guilty of committing battery without causing bodily harm to her health and was sentenced to four months of corrective labour and to provide compensation for the moral damage that he had caused. The sentence fully corresponds to the severity of the crime committed.

4.12 The State party further considers that the author's complaint does not include arguments demonstrating that the law used to criminalize K.'s actions would be

[2] Article 119 of the Criminal Code states that a threat to cause death or grave bodily harm, if there are grounds to believe that such a threat will be carried out, is punishable by compulsory labour of up to 480 hours, limitation of freedom of up to two years, compulsory labour of up to two years, arrest of up to six months or deprivation of liberty of up to two years.

[3] The author's initial complaint asking the police to initiate a criminal case against K. was lodged on 24 February 2013.

discriminatory. In addition, the author provides no evidence that K.'s actions were motivated by the author being a woman or directed towards discriminating against her based on her gender.

4.13 Lastly, the State party believes that, since K. was not a member of her family at the moment of the alleged violence, because the author began living with another man in 2010, the author's claim that she was a victim of domestic violence is also unsubstantiated.

Author's comments on the State party's observations on admissibility and the merits

5.1 In her comments dated 12 July 2016, the author challenges the State party's assertion that she did not exhaust all domestic remedies. She claims to have exhausted all effective legal remedies concerning all the violations referred to in her complaint regarding the lack of reaction by the State party to the continuous stalking, including persistent calls and text messages, insults, threats and physical stalking, from which she suffered at the hands of her former partner.

5.2 As regards the appeal to the Oktyabrskiy District Court against the decision of 11 July 2013 denying her measures of protection, the author claims that such an appeal would not have been effective because those measures are not designed for the protection of victims in domestic violence cases. The author and her counsel are not aware of a case in which such measures have been granted in relation to victims in privately prosecuted criminal cases, which are considered to be the least serious. She further claims that the law on State protection of victims, witnesses and other participants in criminal proceedings is discriminatory in nature and cannot be seen as an effective and urgent remedy for the protection of victims of domestic violence, because the burden of proving the existence of a direct and imminent threat to life and health beyond reasonable doubt is placed entirely on the victim, who acts as a private prosecutor in a criminal case. Moreover, such protective measures can be effective only if they are applied immediately. In the author's case, her petition for protective measures was considered 22 days after its submission, which is seven times longer than is prescribed by law.[4]

5.3 The author notes that she repeatedly complained to the District Court and the District Prosecutor about the inaction of the police and their decisions in the course of the preliminary examination after her complaints of stalking. The decisions by the police not to initiate criminal proceedings against K. were found unlawful by the District Court and the District Prosecutor's Office, but this did not lead to a positive result for the author. The author further notes that, three years after the event, the authorities have still not conducted the necessary investigation into an act of domestic violence, brought the perpetrator to justice or provided her with protection from stalking, nor compensated her for the damage arising from the psychological stress linked to the threats of violence repeatedly made to her by K.

5.4 The author believes that the internal legal remedy that the State party referred to (see para. 4.8 above), is unduly prolonged and unlikely to lead to effective relief within the meaning of article 4 (1) of the Optional Protocol. Between February and August 2013, the author lodged several criminal complaints with the police about threats and stalking, and was reasonably hoping that the police would conduct the necessary investigation into them. The author believes that, considering her persistent attempts to bring her claims before the national authorities, the request to continue her efforts using ineffective legal remedies, while the authorities remained

[4] See article 18 (2) of the law on State protection of victims, witnesses and other participants in criminal proceedings.

completely passive, would impose an undue burden on her as the victim of gender-based discrimination. The author therefore considers that she has been a victim of gender-based discrimination within the meaning of article 1 of the Convention, read in the light of general recommendations No. 19 and No. 28, and that her complaint is admissible.

5.5 The author further submits that the State party did not react to the continuous harassment that she suffered at the hands of her former partner, which included threats, persistent calls and text messages, insults and physical stalking. She challenges the State party's argument that the last and only documented episode of telephone threats is dated 24 February 2013. In her complaints to the police, the author cited the quantity and content of the threats that she had received from K. between 21 February and 25 May 2013. She considered that the nature and content of those calls and text messages were serious and had therefore repeatedly turned to the police asking them to ensure her safety. The author argues that even one complaint about one episode of threats should have sufficed for the police to take measures to protect her against the dangerous actions of her former partner, who had previously been found guilty of committing an act of physical violence against her.

5.6 The author further refers to the "systemic shortcomings" of the State party's legislation and the lack of definition of "domestic violence" and "stalking". She considers that the lack of such legislation leads to a need to apply the general provisions of the criminal law, which the State party refers to in its submission. In the author's view, the circumstances of her case and reports of non-governmental organizations demonstrate that the general provisions of the criminal law are unable to ensure a timely and effective response to the problem of domestic violence.[5]

5.7 The author further notes that the authorities qualified K.'s actions as a death threat. That classification covers only a part of the unlawful and unwanted actions of K. against her. Even in that case, however, being guided by discriminatory and stereotypical notions of what constitutes a "real" death threat and to what extent K.'s actions were dangerous to the author, the authorities failed to initiate criminal proceedings, which resulted in the expiration of the statute of limitations for that particular offence. The authorities thus ignored the situation of stalking and failed to consider the dangerous nature of the violence and its effect on the author's life.

5.8 The author draws attention to the State party's positive obligation to provide protection from domestic violence to all women, regardless of the type of family in which they choose to live. The State party's responsibility to fulfil its obligations cannot depend on the marital status of a woman. In accordance with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), "domestic violence shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim" (art. 3 (b)). As follows from the author's case, over the course of several years family relations were established between the author and K. At the time of the event in question K. was a former partner of the author and the violence that he committed against her was directly connected to the nature of the relationship that had previously existed between them. The author therefore considers irrelevant the State party's arguments that, because K. was not a member of her family when he committed violence against her, she could not be a victim of domestic violence.

[5] The author refers to a report entitled "Violence against women in the Russian Federation" by the ANNA National Centre for the Prevention of Violence, submitted to the Committee at its forty-sixth session.

5.9 The author highlights the danger of such a narrow definition of domestic violence, which leads to a failure to provide protection for a large number of women. Recent amendments to the criminal legislation (art. 116 of the Criminal Code) put a limit to criminal liability for beatings of "close persons", who include the husband or wife of a perpetrator and those who live in a common household. Thus, those women who for one reason or another prefer not to marry their partners and do not live with them are left without protection.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 66, the Committee may decide to consider the admissibility of the communication together with its merits. In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.[6] In that connection, the Committee notes the State party's argument that the communication should be declared inadmissible under that provision because the author failed to lodge a cassation appeal with the Supreme Court against the decision of the lower court of 21 February 2013 or the decision of the appellate court of 11 July 2013. In addition, the State party submits that the author's complaint against the decision by the police, dated 7 March 2013, to refuse to initiate a criminal case against K. was repeatedly returned by the District Prosecutor's Office for additional investigation as premature and unsubstantiated. The Committee also notes the State party's submission that an internal investigation has been initiated by the police into the failure to carry out the actions demanded by the District Prosecutor's Office and the failure to investigate the author's complaints in due time. Nevertheless, the Committee notes the author's submission that she persistently complained to the District Court and the District Prosecutor about the inaction of the police and their refusal to initiate a criminal investigation and that, three years after her complaints, the police had still not initiated any investigation.

6.3 The Committee further notes that the author submitted new complaints on 20 and 21 May 2013 about further threats by K., which again resulted in a refusal by the same officer to initiate a criminal investigation. It also notes that no investigation was initiated after the District Prosecutor and the District Court quashed the decision of the officer not to investigate the complaint. The Committee also notes that, between September 2013 and December 2014, the District Prosecutor's Office ordered that the case materials should be returned for additional inquiry on five occasions and that the alleged perpetrator should be interrogated about the death threats sent to the author on 23 and 24 February 2013. In addition, on 3 June 2013, the District Court also found that the refusal by the officer to investigate the complaint was unlawful and unsubstantiated and ordered an additional inquiry. Nevertheless, the Committee also notes that on each occasion the officer responsible failed to locate and interrogate the alleged perpetrator and

[6] See *E.S. and S.C. v. United Republic of Tanzania* (CEDAW/C/60/D/48/2013), para. 6.3, and *L.R. v. Republic of Moldova* (CEDAW/C/66/D/58/2013), para. 12.2.

refused to investigate the complaint and that, consequently, no specific measures were taken to protect the author against the threats that she received.

6.4 The Committee further notes the author's submission that punishment for death threats has a two-year statute of limitations from the date on which the threats were made. The statute of limitations for the events in question therefore expired in February 2015 and any attempt to bring the perpetrator to justice beyond that date is therefore time-barred.

6.5 Lastly, the Committee notes that the State party provides no explanation as to how domestic remedies would have been effective in securing the rights of the author, given the consistent absence of any further measures to protect those rights. The Committee therefore concludes that, in the present case, the domestic remedies referred to by the State party would be unlikely to bring effective relief. Accordingly, the Committee is not precluded, by virtue of the requirements of article 4 (1) of the Optional Protocol, from considering the present communication as raising issues under articles 1, 2 (b)–(g), 3 and 5 (a) of the Convention.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided for in article 7 (1) of the Optional Protocol.

7.2 With regard to the submission of the author that the decisions of the authorities were based on gender stereotypes, in violation of article 5 of the Convention, the Committee reaffirms that the Convention places obligations on all State organs and that States parties can be responsible for judicial decisions that violate provisions of the Convention.[7] The Committee also emphasizes that the full implementation of the Convention requires States parties not only to take steps to eliminate direct and indirect discrimination and improve the de facto position of women, but also to modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination against women.[8] Gender stereotypes are perpetuated through various means and institutions, including laws and legal systems, and can be perpetuated by State actors in all branches and at all levels of government and by private actors.[9]

7.3 The Committee recalls that, in accordance with paragraph 6 of its general recommendation No. 19, discrimination within the meaning of article 1 of the Convention encompasses gender-based violence against women. Such discrimination is not restricted to action by or on behalf of States parties. Rather, under article 2 (e) of the Convention, States parties may also be responsible for private acts, if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation (see para. 9 (a) below). This has been reaffirmed by the Committee in paragraph 24 of its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and in its jurisprudence.[10]

7.4 The Committee takes note of the argument of the State party that, because K. was not a member of the author's family at the time of the alleged violence, her claim that she was a victim of domestic violence is unsubstantiated. The Committee

[7] See *V.K. v. Bulgaria* (CEDAW/C/49/D/20/2008), para. 9.11, and *L.R. v. Republic of Moldova*, para. 13.6.

[8] See *Belousova v. Kazakhstan* (CEDAW/C/61/D/45/2012), para. 10.10.

[9] See *R.K.B. v. Turkey* (CEDAW/C/51/D/28/2010), para. 8.8.

[10] See also *Goekce v. Austria* (CEDAW/C/39/D/5/2005) and *Yildirim v. Austria* (CEDAW/C/39/D/6/2005).

is of the view that, as long as the violence towards a former spouse or partner stems from that person being in a prior relationship with a perpetrator, as in the present case, the time that has elapsed since the end of the relationship is irrelevant, as is whether the persons concerned live together. The Committee also recalls that, pursuant to the Istanbul Convention, domestic violence is defined as "acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim" (art. 3 (b)). The Convention includes no statutory time limit on how long after the end of a relationship a spouse or partner can claim that the violence perpetrated by the ex-partner falls within the definition of "domestic" violence. The Committee therefore considers that K.'s actions towards the author fall within the definition of domestic violence.

7.5 The Committee also recalls that, under articles 2 (a), (c), (d) and (e) and 5 (a) of the Convention, the State party has a duty to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women. In that regard, the Committee stresses that stereotyping affects women's rights to a fair trial and that the judiciary must be careful not to create inflexible standards on the basis of preconceived notions of what constitutes domestic or gender-based violence, as noted in its general recommendation No. 33 (2015) on women's access to justice.[11]

7.6 In the present case, the compliance of the State party with its obligations under articles 2 (a), (c), (d) and (e) and 5 (a) of the Convention to eliminate gender stereotypes needs to be assessed in the light of the level of gender sensitivity applied in the judicial handling of the author's case. In that regard, the Committee notes that it took the District Court 22 days, instead of the 3 prescribed by law, to rule on the author's petition that she be provided with protective measures. The Committee also notes with concern that the author submitted official complaints to the police four times between February and August 2013 and that all her complaints resulted in refusals to initiate criminal proceedings, despite the direct order received from the District Prosecutor's Office and the District Court to interrogate K. and carry out all other necessary investigative procedures. No other measures were taken by the authorities to protect the author against the violence by her former partner and, more than three years after the events in question took place, the authorities had still not even interrogated K. When it eventually ruled on the petition, the Court referenced the refusal by the police to initiate criminal proceedings against K. and the absence of a "real threat" as a basis for refusing to provide protective measures, even though one month earlier the same court had found the same refusal to be unlawful and unsubstantiated. The Committee notes that none of these facts has been disputed by the State party and that, read as a whole, they indicate that, by failing to investigate the author's complaint about death threats and threats of violence promptly, adequately and effectively and by failing to address her case in a gender-sensitive manner, the authorities allowed their reasoning to be influenced by stereotypes. The Committee therefore concludes that the State party's authorities failed to act in a timely and adequate manner and to protect the author from violence and intimidation, in violation of the obligations under the Convention.

7.7 The Committee further notes the author's submission that, to date, the legislation in the State party does not include a definition of domestic violence and does not provide effective legal protection against domestic violence. In that regard, the Committee recalls that, under article 3 of the Convention, States parties "shall

[11] See also *L.R. v. Republic of Moldova*, para. 13.6.

take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men". The Committee also recalls its concluding observations on the State party's eighth periodic report, in which it recommended that the State party should urgently adopt comprehensive legislation to prevent and address violence against women, including domestic violence; introduce ex officio prosecution of domestic and sexual violence; ensure that women and girls who were victims of violence had access to immediate means of redress and protection; and that perpetrators were prosecuted and adequately punished (CEDAW/C/RUS/CO/8). The Committee considers that the fact that a victim of domestic violence has to resort to private prosecution, wherein the burden of proof is placed entirely on her, denies the victim access to justice, as observed in paragraph 15 (g) of its general recommendation No. 33. The Committee notes that recent amendments to national legislation (art. 116 of the Criminal Code) that decriminalize battery, under which many domestic violence cases are prosecuted owing to the absence of a definition of "domestic violence" in Russian law,[12] go in the wrong direction and lead to impunity for perpetrators of these acts of domestic violence.

7.8 The Committee considers that the failure by the State party to amend its legislation relating to domestic violence directly affected the possibility of the author being able to claim justice and to have access to efficient remedies and protection. It also considers that the case shows a failure by the State party in its duty to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices that are based on the idea of the inferiority or superiority of either of the sexes, or on stereotypical roles for men and women.

7.9 In the light of the foregoing, the Committee considers that the manner in which the author's case was addressed by the State party's police and prosecutorial and judicial authorities constitutes a violation of her rights under articles 1, 2 (a), (c), (d) and (e), 3 and 5 (a) of the Convention. Specifically, the Committee recognizes that the author has suffered moral damage and prejudice. She was subjected to fear and anguish when she was left without State protection while she was periodically persecuted by her aggressor and was exposed to renewed trauma when the State organs that ought to have been her protector, in particular the police, instead refused to offer her protection and denied her status as a victim.

8. Acting under article 7 (3) of the Optional Protocol and in the light of the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the author's rights under articles 1, 2 (b)–(g), 3 and 5 (a) of the Convention.

9. The Committee makes the following recommendations to the State party:

(a) Concerning the author of the communication: provide adequate financial compensation to the author commensurate with the gravity of the violations of her rights;

(b) General:

(i) Adopt comprehensive legislation to prevent and address violence against women, including domestic violence, introduce ex officio prosecution of domestic and sexual violence and ensure that women and girls who are victims

[12] As at 7 February 2017, battery of "close persons" without causing bodily harm was categorized as an administrative offence, rather than a criminal offence.

of violence have access to immediate means of redress and protection and that perpetrators are prosecuted and adequately punished;

(ii) Reinstate criminal prosecution of domestic violence within the meaning of article 116 of the Criminal Code;

(iii) Put in place a protocol for handling domestic violence complaints in a gender-sensitive manner at the level of police stations to ensure that no urgent or genuine complaint of domestic violence is summarily set aside and that victims are given adequate protection in a timely manner;

(iv) Renounce private prosecution in cases of domestic violence, given that the process unduly puts the burden of proof entirely on victims of domestic violence, in order to ensure equality between the parties in judicial proceedings;

(v) Ratify the Istanbul Convention;

(vi) Provide mandatory training for judges, lawyers and law enforcement personnel, including prosecutors, on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular general recommendations No. 19, No. 28, No. 33 and No. 35;

(vii) Fulfil its obligations to respect, protect and fulfil the human rights of women, including the right to be free from all forms of gender-based violence, including domestic violence, intimidation and threats of violence;

(viii) Investigate promptly, thoroughly, impartially and seriously all allegations of gender-based violence against women, ensure that criminal proceedings are initiated in all such cases, bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and impose appropriate penalties;

(ix) Provide victims of violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure that they have access to available, effective and sufficient remedies and rehabilitation in line with the guidance provided in the Committee's general recommendation No. 33;

(x) Provide offenders with rehabilitation programmes and programmes on non-violent conflict resolution methods;

(xi) Develop and implement effective measures, with the active participation of all relevant stakeholders, such as women's organizations, to address the stereotypes, prejudices, customs and practices that condone or promote domestic violence.

10. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.